

Message

From: Able, Tony [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=08873E26CCD44323B0F6AB96E0E8FADA-ABLE, ANTHONY]
Sent: 9/16/2021 4:50:47 PM
To: Danois, Gracy R. [Danois.Gracy@epa.gov]; Johnson, Bonita [Johnson.Bonita@epa.gov]; Bouma, Stacey [Bouma.Stacey@epa.gov]; Hansel, Joel [Hansel.Joel@epa.gov]
CC: Hopkins, Marion [Hopkins.Marion@epa.gov]
Subject: RE: Please Review: Draft Response - GA Fecal to E. coli Transition

Lets talk before you send this; about what transpired since the Sept 8 call with Liz and the response below. When I got off of the call we had not fully concluded what Jack was asking.

I would think that we would start by answering the specific question; that GA needs new fecal data or new Ecoli data showing that the waters are no longer impaired. That is what I remember from the call on the 8th. See my suggestion.

Do I read this correctly that 106 does not fund monitoring? *territories, and interstate agencies (not including Monitoring Initiative funds) using an allocation*

I can't open the attachments

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From: Danois, Gracy R. <Danois.Gracy@epa.gov>
Sent: Tuesday, September 14, 2021 2:01 PM
To: Johnson, Bonita <Johnson.Bonita@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Bouma, Stacey <Bouma.Stacey@epa.gov>; Hansel, Joel <Hansel.Joel@epa.gov>
Cc: Hopkins, Marion <Hopkins.Marion@epa.gov>
Subject: RE: Please Review: Draft Response - GA Fecal to E. coli Transition

Bonita,

I made an edit to the information below. It is highlighted in green.

Gracy

From: Johnson, Bonita <Johnson.Bonita@epa.gov>
Sent: Tuesday, September 14, 2021 10:00 AM
To: Danois, Gracy R. <Danois.Gracy@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Bouma, Stacey <Bouma.Stacey@epa.gov>; Hansel, Joel <Hansel.Joel@epa.gov>
Cc: Hopkins, Marion <Hopkins.Marion@epa.gov>
Subject: Please Review: Draft Response - GA Fecal to E. coli Transition

Good morning,

I hope that all is well. The draft response is attached and is also included below. Gracy and Marion have reviewed it. Please let me know if there are modifications that need to be made. I believe the next step will be to send it to Liz for review.

All the best,

Bonita

Liz: To answer your questions from our call on September 8, the state would need to provide new Fecal or E coli data in this specific situation in order to move the waters from category 5. Implementing a new standard (E coli) does not provide information that the waters now meet the new or the old standard.

1. How to manage a change in standards in the 303(d) Impaired Waters List

In a conference call on September 8, 2021, GAEPD described the desire to move waters listed for fecal coliform on the 2022 303(d) list (category 5) and waters included in category 4a (TMDL established) to category 3 in the 2024 IR. A “delisting” needs to be for “good cause.” Moving waters to category 3 constitutes delisting waters from the 303(d) list (category 5). The following citations describe good cause conditions under which it is acceptable to delist waters and place them in category 3.

40 CFR § 130.7(6)(iv) requires the following:

Upon request by the Regional Administrator, each State must demonstrate good cause for not including a water or waters on the list [emphasis added]. Good cause includes, but is not limited to, more recent or accurate data; more sophisticated water quality modeling; flaws in the original analysis that led to the water being listed in the categories in §130.7(b)(5); or changes in conditions, e.g., new control equipment, or elimination of discharges.

The EPA has provided information through multiple guidance memorandums since 1994 as to how this requirement should be addressed. In the August 1997 program guidance, the EPA specifically addressed the topic of what to do when a state was in the process of revising its standards:

States may revise their water quality standards to address changes such as a Use Attainability Analysis (as provided by 40 CFR section 131.10), development of a site-specific criterion, or updated science. Several States have asked whether they may exclude waters from the State section 303(d) lists if a water quality standard is in the process of being revised to be less stringent than the standard that is in effect. They are concerned that once the water quality standard has been revised, a waterbody that was water quality-limited under the old water quality standard may not be water quality-limited under the revised water quality standard.

A decision not to list because a water quality standard is in the process of being revised would be inconsistent with the regulations cited above and the Clean Water Act, which require a State to identify "those waters within its boundaries" where controls "are not stringent enough to implement any water quality standard applicable to such waters" (section 303(d)(1)(A) of the Clean Water Act, emphasis added). Therefore, for the 1998 listing cycle, States should include on their section 303(d) lists waters that do not meet an applicable water quality standard at the time of listing, even if the standard is in the process of being revised to be less stringent. If the standard is in fact revised in the future, the water may be removed from the section 303(d) list at that time provided the water no longer meets the listing requirements. States have the discretion, of course, to assign a low priority to those waters where there is a likelihood that they may be removed from the list in the near future.

Information Concerning 2010 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions

EPA recommends that States include in their assessment methodologies a description of the rationale to be used in assigning waters to category 3. In particular, EPA regulations require States to provide in their Section 303(d) list submissions a rationale for not using any existing and readily available water quality data and information in developing

the list (40 CFR 130.7(b)(6)(iii)). EPA also expects that waters identified as impaired and listed on the 303(d) list in the previous reporting cycle will not be removed from the list and placed into Category 3 in the subsequent listing cycle unless the State can demonstrate good cause for doing so, consistent with EPA regulations (40 CFR § 130.7(b)(6)(iv)). The State should explain why the data and information that formed the basis for the original listing is no longer sufficient for determining that the water is still impaired.

2. How are Section 106 funds allocated to states, territories, and interstate agencies?

Each year the president's budget includes a funding request for the Section 106 program. Congress, when developing the annual budget, uses the president's request as a starting point for determining how much funding to appropriate for Section 106 grants.

Once the annual budget is finalized, EPA calculates Section 106 allotment funds to states, territories, and interstate agencies (not including Monitoring Initiative funds) using an allocation formula that funds "on the basis of the extent of the pollution problem in the state" (CWA section 106(a)(2)). The formula is published in the Code of Federal Regulations at 40 CFR Part 35.162 (PDF) (4 pp, 339 K, [About PDF](#)). Interstate agencies receive 2.6 percent of the overall state and territorial allotment.

If funding remains the same as the previous year, all states will receive their previous year's allotment.

If available funding has increased over previous years, the formula calls for all states to receive:

- *A funding floor (i.e., the previous year's allotment) and*
- *An adjustment for inflation calculated using the historical consumer price index.*
- *Any additional funding is distributed based on the extent of water quality problems in each state or territory (or portion of the state for the interstate allotments), including surface water area, ground water use, water quality impairment, point source pollution, nonpoint source pollution, and population of urbanized areas.*

The formula also establishes a funding ceiling limiting an allotment from increasing more than 150 percent from the previous year.

In years of decreased funding, each allotment is reduced by an equal percentage.

How often are the data in the allotment formula updated?

*At a minimum, the data used in the formula must be updated every five years. EPA can update the formula more frequently, if necessary. The data in the formula were last updated in **2016**.*

The Agency will be updating the data in the variable formula this FY. Two webinars were hosted by ACWA to explain how the formula works. We have attached the slides from the presentations. The first presentation provides a broad overview of the 106 program and the second one goes in-depth on how the variable portion of the allocations are calculated. We hope that these will clarify your questions on the 106 program allocations.



CWA Section 106
Grants Part One_FINA



CWA Section 106
Grants Part Two FINA

For the update currently in progress, the Agency will use the most recent data available in ATTAINS which for Georgia will be the data associated to the approved 2020 303(d) list.